

TESTIMONY OF JOHN G. BIZON, MD

Good morning, and thank you Chairman Hune and members of the Committee for the opportunity to testify today.

My name is Doctor John Bizon, I am an otolaryngologist from Battle Creek. In addition to my responsibilities as a full-time practicing physician, I am also the President of the Michigan State Medical Society.

Quality care, patient safety, and access to care were all founding principles of the Michigan State Medical Society back in 1866. They remain our physicians' top priorities to this day. Michigan physicians have always put patients first.

I know that children as young as elementary school age begin to have thoughts about becoming a doctor. Why? Because they want to help people. I know this is a fact because two of my children made the commitment early in their lives to become physicians.

As evidence, I would like you to meet my daughter, Doctor Cathy Burtrum, who is midway through her residency in general surgery in Grand Rapids. I assure you I am working hard to do my part in keeping our young physicians in Michigan and I hope you will do your part by enacting this legislation.

Our young physicians work hard to learn all they can about the art and science of medicine before starting a practice of their own. They have completed four years of undergrad, four years of medical school, and three to 11 years of hospital-based residency training programs. Graduates of Michigan's outstanding medical schools and training programs are among the best in the nation. They are committed to treating their patients to the best of their abilities. One of my concerns is about *where* they will treat their patients.

These are highly mobile, highly technical young physicians who can practice anywhere. They easily compare variables from state to state. One of those measurements is the liability climate. States such as Texas, where they have instituted significant tort reforms, enjoy a stampede of new, young physicians. Michigan, not so much.

Studies commissioned by MSMS as well as an independent study by Michigan State University and others, show that we will have a shortage of about 4,500 physicians in Michigan by 2020. We have to work hard to make Michigan a good place to do business for our new physicians.

I appreciate the fact that this Committee has received a significant amount of testimony about the unfortunate circumstances regarding individual patients. I would like to express my sympathy for the suffering those individuals and families have endured. Physicians are extremely sensitive to patients who have not enjoyed a perfect outcome.

A less than perfect outcome, however, cannot be automatically attributed to malpractice. Every human body and spirit is different. Even when every effort is made to take variables into account, which is what doctors and nurses do every day in developing treatment plans, a patient may endure a mal-occurrence, or bad outcome, that had nothing to with negligence.

I would also like to be very clear that it is the position of the Michigan State Medical Society that meritorious cases continue to have access to the courts. Senate Bills 1115-1118 seek to build on the premise of the tort reforms passed in 1993, which is that patients with a valid claim can reasonably access our courts while simultaneously creating a degree of balance to protect physicians from meritless cases.

Why should you be concerned about reducing the number of meritless cases?

First of all, while litigation may be free for a plaintiff who hires an attorney on a contingency fee, that is not the case for a physician named as a defendant. A private practice physician like me would lose any income during the trial as well as time spent away from other patients for depositions and other trial related endeavors.

Additionally, my liability carrier will typically expend significant resources in reviewing the case and paying attorney fees to defend the case. Cases that don't go to trial will still cost \$20,000, while cases that do go to trial will cost \$70,000. These costs are passed along to physicians in the form of premiums and embedded in the higher health insurance premiums paid by individuals and businesses. This adds to the overall cost of our health care system. So even when a physician is completely exonerated of any wrongdoing, he or she has hardly won anything. Secondly, of the cases initiated in Michigan, the overwhelming majority result in no payout to the plaintiff. The two major liability carriers both found that 70-80 percent of claims are closed with no payment of damages.

There is also a cost in emotional turmoil. A recent *New England Journal of Medicine* study showed that most physicians will be sued sometime during their careers. Ninety-nine percent of the five highest risk specialists will be sued. What other profession has that threat constantly hanging over their heads? It also said that physicians fear the sheer fact of being sued, not just having a suit on their record. This fear further adds to defensive medicine.

In a nutshell, one of the primary objectives of this legislation is to hold physicians to the same standard to which attorneys are held regarding professional liability. That seems fair, doesn't it? For example, the Judgment Rule in legal malpractice cases is essentially that an attorney is not answerable for mere errors in judgment as long as the actions were taken in good faith in an honest belief that the activities were well-founded in the law. We are asking you to level that playing field.

The bottom line is that tort reform works. Whether in Michigan or any of the other states that have adopted tort reforms, we repeatedly see the same thing—the insurance market stabilizes and physicians are able, once again, to return to practice.

Michigan has a strong history of being a leader and an innovator in the area of tort reforms. The majority of our reforms were passed in 1993, and many states have used our statute as a model for their own reforms. A handful of unfavorable court decisions, as well as the experience of the last 20 years, has provided insight as to the strengths and weaknesses of our tort reforms. Senate Bills 1115-1118 are reforms targeted at preserving patients' access to the courts while focusing on minimizing the number of meritless cases from moving forward.

I would close by saying that I am currently coping with the reality of the physician shortage in Michigan. Twenty-four years ago, Doctor Joe Schwarz recruited me to Michigan from the Air Force so that he could pursue a life in public service and his terms in the Michigan Senate.

However, I now find myself struggling to recruit someone to continue to treat the patients I have been fortunate enough to serve these past several years. I am delaying my retirement because I can't find my own replacement. I am hopeful that the efforts of this legislature to revitalize Michigan's economy, as well as support for legislation such as Senate Bills 1115-1118, will help to attract more physicians to Michigan and retain those that are here.

Michigan must become a destination for doctors instead of our current exodus. The bonus is that with each new doctor comes another eight Michigan jobs, which is an additional economic boon from these bills.

Let's all put patients first and enact these reforms.

Thank you for this opportunity to testify. I would be happy to answer any questions.